



office of the
independent
adjudicator

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**PRESS NOTICE:
Judicial Review**

**Stephen Budd - and - Office of the Independent Adjudicator for Higher Education
[2010] EWHC 1056 (Admin): Review of Examination Scripts**

The OIA is pleased to report that it has successfully defended a Judicial Review claim about whether or not calling for sight of an examination script rendered the OIA's decision unlawful. All of the claimant's contentions that the OIA had erred in process, had fettered discretion and was not independent were struck down.

The case came before Mr Ockleton sitting as a Deputy High Court Judge on 23 March 2010. In a judgment¹ delivered on **12 May 2010** Mr Ockleton dismissed Mr Budd's claim and dismissed his renewed application for permission on the grounds on which permission had been refused by His Honour Judge Langan QC.

Mr Budd sought to challenge the OIA's decision that his complaint against the Open University was not justified. His Honour Judge Langan QC granted permission to the Claimant on one ground of challenge only: whether the OIA should have called for a copy of Mr Budd's exam script, *"to make sure that the script has the appearance of being properly marked and to make sure that there were no errors in matters such as addition or transcription of marks."* The OIA's decision was that it was not necessary to call for the exam script because it was satisfied that the university had correctly followed its marking and checking procedures.

Mr Budd renewed his application for permission on the grounds rejected by His Honour Judge Langan QC and the case was listed for hearing of the application for permission and the substantive hearing together. Mr Budd made a late application to amend the grounds to include an allegation *"that the OIA is being operated in a way that is unlawful and ultra vires its strict statutory powers and duties in relation to independence"*.

In his judgment, Mr Ockleton said:

"The OIA does its task properly if it continues its investigation until it is confident that it has all the material it needs in order to make a decision on the individual complaint, and then makes its decision. The exercise of a discretion in this context is simply the continuous consideration of whether any more information is needed in order to make a decision on the particular complaint. ..."

CONT'D

¹ *R (Budd) v OIA* Neutral Citation Number [2010] EWHC 1056 (Admin)

On the issue of an oral hearing:

“An initial application under the OIA’s Scheme is made in writing and is followed by correspondence between the OIA and the parties. Material produced by one party is shown to the other, and written comments are invited. Although the OIA is obliged to investigate the complaint it is not obliged to allow one party to address another directly in the course of its investigation. It is difficult to see why there should be any general need for an oral hearing. I regard the argument from that the fact that there has been no oral hearing as a very weak one indeed.”

On the issue of independence Mr Ockelton said:

“the allegation or implication that the OIA is not independent is not made out...There is simply no evidence that the Independent Adjudicator is not independent, nor that the Board, however constituted, attempts to influence the Independent Adjudicator.”

The OIA is delighted with Mr Ockelton’s judgment which endorses the OIA’s processes and independence.

ENDS

Notes to Editors

1. A copy of the judgment is attached to this Press Notice
2. Please contact Charlotte Corrish, Communications and Policy Manager, by emailing charlotte.corrish@oiahe.org.uk or on 0118 959 9813 for any further information.
3. The OIA is the designated operator of the Scheme for reviewing student complaints, established under the Higher Education Act 2004.
4. The OIA has a wide remit to review student complaints about an ‘act or omission’ of HEIs in England and Wales. It does not review academic judgment or admissions issues. The Scheme Rules and all details related to OIA operations can be found at www.oiahe.org.uk.